STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN NUTTING,

Plaintiff-Appellee,

v

JOSPEH JOHN BOWMAN,

Defendant-Appellant.

UNPUBLISHED
March 23, 2006

No. 257758
Mason Circuit Court
LC No. 04-000081-NI

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court order denying his motion for summary disposition. We affirm.

Plaintiff filed a complaint on March 4, 2004, seeking recovery of damages for injuries he suffered as a result of a car accident that occurred on March 15, 2001. A copy of the complaint and summons was given to Ingham County district court officer David Duncan on March 5, 2004, for service of process on defendant. Plaintiff's attorney served defendant with a copy of the complaint and summons by certified mail, which defendant received on May 21, 2004. A petition and order for a second summons was entered on June 3, 2004.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), asserting that plaintiff's claim was time-barred because he had not been served within the three-year statute of limitations. Defendant also claimed that plaintiff's attorney was not an officer who could serve process within the meaning of MCL 600.5856. Defendant further claimed that the process server engaged by plaintiff was not an officer within the meaning of the statute. The trial court ruled that Duncan was a qualified officer of the court within the meaning of MCL 600.5856. The court found that plaintiff had complied with the requirement of the statute by turning over the summons and complaint to Duncan for service of process and, therefore, the statute of limitations was tolled.

Defendant's argument on appeal is the trial court erred in finding that Duncan was an officer within the meaning of the statute and in consequently holding that plaintiff's cause of action was not time-barred. Defendant concedes that Duncan was an officer of the 54-A District Court, but argues that the statute required Duncan to be an officer of the court in which the summons and complaint were filed.

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *DiPonio Constr Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43; 46; 631 NW2d 59 (2001). This court reviews questions of statutory interpretation de novo as well. *Gladych v New Family Homes, Inc*, 468 Mich 594; 597; 664 NW2d 795 (2003).

The statute of limitations in this case requires the filing of a complaint within three years, MCL 600.5805(1) and (10). The statute, in effect at the time plaintiff filed her complaint, tolled the statute of limitations if certain conditions were met.[1] Those conditions are: (1) the complaint is filed and the summons and complaint are served on the defendant; (2) jurisdiction over the defendant is otherwise acquired; (3) the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service, but in this case the statute is not tolled longer than 90 days after the copy of the summons and complaint is received by the officer; or (4), if, during the applicable notice period under MCL 600.2912b, a claim would be barred by the statute of limitations, but only for the number of days equal to that in the applicable notice period after notice is given in compliance with § 2912b. *Gladych*, *supra* at 598-599.

The narrow issue presented here is whether Duncan was an "officer" within the meaning of MCL 600.5856 and whether, by placing a copy of the summons and complaint in his hands, the statute was tolled.

MCL 600.5856 is silent regarding the definition of an officer. Defendant relies on this Court's opinion in *Coleman v Bolton*, 24 Mich App 547; 180 NW2d 319 (1970), in which we held that a police officer from one jurisdiction is merely a private citizen and not an officer under the statute if process is served outside the officer's jurisdiction. We are not bound to follow our decision in *Coleman*, however because it was decided before November 1, 1990. MCR 7.215(I)(1); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 400; 651 NW2d 756 (2002). We elect not to follow the restrictive construction of the term officer as used by this Court in *Coleman*. Our rejection of the analysis in *Coleman* is rooted in the language of MCL 600.5856. Nothing in the statute mandates that to qualify as an officer, an individual must be an officer in the jurisdiction of the court in which the complaint was filed; to the contrary, the statute requires only that the person be an officer. In construing a statute, this Court should assume that an omission in the statute was intentional. *People v Wilson*, 257 Mich App 337, 345; 668 NW2d 371 (2003), rev'd in part on other grounds 469 Mich 1018 (2004). The Legislature could have included a requirement that to qualify as an officer under MCL 600.5856, the person must be an officer in the jurisdiction of the court in which the complaint was filed, but it did not do so. Furthermore, at the time plaintiff placed the summons and complaint in Duncan's hands, he was an "officer" even under the narrow definition of the term officer as construed by this Court in *Coleman*. It was only after Duncan crossed a county line that our prior decision would hold that he ceased to be an officer. Thus, we agree with the trial court that at the time plaintiff filed the summons and complaint and placed copies of the summons and

[1] The statute was subsequently amended and subsection (c) was omitted.

complaint in Duncan's hands, Duncan was an officer within the meaning of the statute, resulting in the tolling of the statute of limitations.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald